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UNHCR's Recommendations for the Croatian and German Presidencies of the Council of the European Union (EU)

January - December 2020

Introduction

UNHCR has worked closely with the Finnish Presidency of the Council of the EU on asylum and migration issues throughout its mandate, which concluded in December 2019. During this period, progress was achieved in multiple areas including on: resettlement and statelessness, where Member States (MS) have pledged to do more to address these issues and on *ad hoc* relocation and solidarity measures in the disembarkation context following the Joint Malta Declaration of Intent on a controlled emergency procedure of 23 September 2019, which will require still further support from MS.

Germany. Refugee teachers helped back into classrooms.
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A range of measures remain to be addressed by the upcoming Croatian and German Council Presidencies (Council Presidencies). In 2020 the EU has two overarching opportunities to show leadership in better protecting refugees in Europe and abroad:

1. Moving ahead with sustainable asylum reform
2. Providing more support for the countries where most refugees live

This paper provides the incoming Council Presidencies with key recommendations for areas of possible action to strengthen the implementation of the EU *acquis* on asylum and to forge common ground among MS on evolving issues of asylum and migration, in line with the Global Compact on Refugees[1] and the Global Compact for Migration.[2] These recommendations will also be of relevance for the incoming Commission's new Pact on Migration and Asylum (new Pact).

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[1] UN General Assembly, *Report of the United Nations High Commissioner for Refugees, Part II, Global compact on refugees*, A/73/12, New York, 2018, available at: https://www.unhcr.org/excom/unhcrannual/5ba3a5d44/report-united-nations-high-commissioner-refugees-part-ii-globalcompact.html
[2] UN General Assembly, *Outcome document of the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration*, Marrakech, 10-11 December 2018, available at: https://undocs.org/A/CONF.231/L.1

1. Moving ahead with sustainable asylum reform

The upcoming Council Presidencies and the envisaged new Pact present unique opportunities to capitalise on the fresh legislative cycle at EU level. This is a time to redouble efforts to bridge divides between MS and draw on the evidence and experience gained in recent years. At the same time, some MS have put forward suggestions on how to reform the EU asylum system that are signalling a shift in approach, including proposals, which raise serious concerns in terms of ensuring access to asylum and international protection to persons in need of it. Furthermore, approaches, which might shift rather than share responsibility, risk undermining the long-standing efforts to build asylum systems in countries outside the Union by multiple stakeholders including the EU. In light of the opportunities offered by the work towards the new Pact, UNHCR would like to propose the following vision. As laid out in Better Protecting Refugees[3], building such a system should be based on five core principles:

    I.   Foster responsibility sharing and solidarity within the EU;
   II.   Ensure access to territory and fair and fast procedures;
  III.   Support integration and efficient and rights-based return systems;
  IV.   Invest in resettlement and complementary pathways; and
   V.   Addressing statelessness.

In conjunction with the development of a new approach to migration and asylum, the Council Presidencies should ensure the consistent implementation of the current CEAS framework across the EU. Compliance with the current framework is also in the interest of developing a sustainable future asylum system, including promoting the harmonisation of current asylum practice, supporting MS with capacity building, and the effective use of infringement procedures. In addition, UNHCR considers that the European Union Agency for Asylum (EUAA) should be tasked with the mandate to monitor the implementation of the CEAS and address any shortcomings.

UNHCR remains committed to contribute to, and help facilitate, further discussion between key actors and to provide technical expertise and support, as needed.

I.   Foster responsibility sharing and solidarity within the EU

In-line with the Global Compact on Refugees, the EU can lead by example by developing a sustainable European system that is both responsive and responsible in addressing arrivals of mixed movements. EU MS facing a disproportionate number of arrivals need to be supported by specific intra-EU solidarity mechanisms that can take different forms. Pending CEAS reform, the implementation of existing frameworks need to be strengthened, such as the more efficient, proactive and flexible use of the Dublin Regulation and its "discretionary clauses" that can foster responsibility-sharing and solidarity in the EU, as per UNHCR's Left in Limbo[4] study. Reforming the Dublin Regulation to include a relocation mechanism, complemented by fair and efficient asylum decisions, followed by integration or strengthened and dignified return depending on the outcome of these decisions, would be one sustainable and effective way of sharing responsibility among EU MS.

Inspiration could also be drawn from existing, and by further developing, good practices from recent initiatives to establish a temporary but predictable cooperation mechanism for disembarking and relocating those rescued in the Mediterranean, including with the support

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[3] UNHCR, *Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity*, December 2016, available at: https://www.refworld.org/docid/58385d4e4.html
[4] UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation - Executive Summary,* August 2017, available at: https://www.refworld.org/docid/59d5dd1a4.html

of UNHCR and IOM.[5] This should further galvanise broader EU engagement and revitalize a rescue at sea arrangement, in line with UNHCR's non-return position[6] to Libya. Furthermore, MS should redeploy Search and Rescue (SAR) operations, including naval assets, and NGOs should not be criminalised for saving lives at sea.

Key Recommendations:

- **A fair, transparent and proportional system for responsibility sharing among MS.** Continue to advance efforts to establish an effective solidarity mechanism, including through relocation arrangements in order to support all EU MS receiving a disproportionate number of asylum claims.
- **Ensure family unity.** MS should prioritise family unity in relocation to help reduce dangerous journeys, including instances of onward movement.[7] Pending reform of the Dublin Regulation, MS should make proactive and flexible use of the "discretionary clauses" to this end.
- **Support a predictable disembarkation and processing mechanism.** Pending long-term reform of the European asylum rules, continue developing a safe and predictable disembarkation mechanism in relation to the Mediterranean Sea.

II.   Ensure access to territory, fair and fast procedures

Long term, coherent, and comprehensive arrangements at the EU level are needed to address and respond to mixed movements effectively in EU territories, and to ensure the EU's continued support for countries of transit and asylum beyond its borders. Contrary to some proposals that envisage the mandatory use of admissibility procedures and the safe third country concept, UNHCR proposes the use of accelerated and simplified in-merits procedures in the EU with full procedural guarantees, to quickly determine whether the applicant has the right to stay in the EU or is required to return. Such an approach is preferable given the unresolved operational challenges associated with the safe third country concept and the need to share rather than shift responsibility on to third countries.

Firstly, **evidence-based evaluation** of past efforts and impact assessments should guide future responses and the development of new legislation. At the same time, ongoing monitoring and contingency planning are crucial tools to foster an EU that is prepared and responsive to evolving needs.

Secondly, a streamlined process upon arrival and investing resources in the early stages of the asylum process can enhance its more efficient functioning. EU Agencies and MS should ensure access to territory to persons wishing to seek asylum, including those arriving irregularly, in full compliance with their right to seek asylum and the principle of *non-refoulement*, complemented by swift identification, registration and frontloading resources such as early screening and vulnerability assessments. This can contribute to the efficiency and quality of asylum procedures, and reduce long waiting periods for asylum seekers and negative impacts on integration or the likelihood of return. Such initial investments can also prove financially sound by limiting the volume of appeals against negative decisions. EU Agencies, including the European Asylum Support Office and the European Border and Coast Guard Agency, play an important role in the implementation of protection-sensitive border management and capacitating asylum systems. At the same time, their monitoring and accountability mechanisms should be strengthened.

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[5] UNHCR and IOM, *Proposal for a regional cooperative arrangement ensuring predictable disembarkation and subsequent processing of persons rescued-at-sea*, 27 June 2018, available at: https://www.unhcr.org/partners/eu/5b35e60f4/proposal-regional-cooperative-arrangement-ensuring-predictable-disembarkation.html
[6] UNHCR, *UNHCR Position on Returns to Libya - Update II,* September 2018, available at: https://www.refworld.org/docid/5b8d02314.html
[7] UNHCR, *Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers*, September 2019, available at: https://www.refworld.org/docid/5d8a255d4.html

Thirdly, quality and efficient asylum procedures can be supported by accelerating and simplifying procedures of both manifestly well-founded and unfounded claims, with all applications decided on the basis of an in-merit assessment, as outlined in UNHCR's Fair and Fast.[8] Such in-merit assessment on an accelerated basis can reduce backlogs and the overall cost of processing, guarantee quick access to international protection for those who need it, and facilitate swift returns for those who do not. Fair and Fast can be tailored to specific operational contexts, which UNHCR stands ready to assist with.

Rendering first-instance decision making more efficient and harmonized requires sufficiently well-trained staff and high-quality, accurate and independent Country of Origin Information from a range of sources, including UNHCR. To ensure quality, due process and judicial oversight need to be guaranteed alongside sufficient capacities for judicial bodies to conduct appeal procedures. Timelines that are too short can undermine the quality of procedures or the right to an effective remedy, leading to costly delays in the procedure. Finally, the use of mandatory admissibility procedures is problematic as their legal requirements are operationally difficult to implement, and they can discourage the development of nascent asylum systems in third countries that would be targeted for readmission. On the other hand, UNHCR encourages[9] asylum seekers to apply for asylum where this is possible as they have no unfettered right under international law to choose their country of asylum, and all signatories to the 1951 Convention[10] have a responsibility to provide protection to persons seeking asylum in their territories.

Detention of asylum-seekers should not be routine practice at any stage in the procedure, either at the border or inside the territory, and only be applied as a last resort when there are legitimate grounds for detention and no alternative means are available. Those with vulnerabilities, including children[11], should not be detained.

The pre-accession process provides opportunities to support countries in the Western Balkans in terms of further developing their asylum systems. UNHCR remains ready to continue to work with the EU institutions and Agencies in the further development of protection-sensitive border management, fair and efficient asylum procedures and first reception capacity, ensure a consistent regional approach to registration, strengthen access to fundamental rights and services, as well as expand integration opportunities. These efforts, however, need to go hand in hand with a continuous commitment by EU MS to provide direct access to the territory and asylum procedures by persons seeking international protection.

Key Recommendations:

- **Ensure access to territory.** Access to the asylum procedure and a fair assessment of the asylum application must be guaranteed as enshrined in law. Admissibility procedures coupled with the use of "safe country" concepts are currently not amenable to mandatory use across the EU as they remain legally contentious and difficult to implement.
- **Accelerating the processing of manifestly well-founded and unfounded claims.** Consider UNHCR's Fair and Fast[12] on accelerated and simplified procedures.
- **Frontloading and investment in initial stages of the asylum procedure**. Actively promote investments in the initial stages of the asylum procedure, including legal assistance, to ensure greater efficiency throughout the procedure.

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[8] UNHCR, *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, available at: https://www.refworld.org/docid/5b589eef4.html
[9] UNHCR, *Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers*, September 2019, available at: https://www.refworld.org/docid/5d8a255d4.html
[10] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, available at: https://www.refworld.org/docid/3be01b964.html
[11] UNHCR, *UNHCR's position regarding the detention of refugee and migrant children in the migration context*, January 2017, available at: https://www.refworld.org/docid/5885c2434.html
[12] UNHCR, *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, available at: https://www.refworld.org/docid/5b589eef4.html

- **Promote Alternatives to Detention (ATDs) and care arrangements.** The Presidency should explore alternatives that are less costly while retaining high rates of compliance. Possible alternatives are outlined in UNHCRs Options Paper 1: on reception and care for children and families[13] and Options Paper 2: on open reception and ATDs.[14]

III.   Support integration and efficient and rights-based return systems

Building social cohesion, stability and security requires that communities are well-equipped to receive refugees, and that refugees are well-supported to realize their potential in their new environments (including outside the EU, see Section 2). **Integration systems can be supported by three key elements:** including increased funding for integration programmes; predictable, harmonized services; and engaging communities and civil society actors in fostering welcoming communities with a holistic approach, as outlined in Better Protecting Refugees.[15] Incentivising asylum seekers/refugees to comply with the system, rather than using restrictive measures alone, can reduce onward irregular movement and increase integration prospects. Incentives include ensuring family unity and enabling refugees with the means to be self-reliant to establish themselves after a period of time.

The integrity of the EU's asylum space is also dependent on a **functioning return system.** Throughout the asylum procedure and in particular in the case of a negative decision, asylum seekers should have the opportunity to avail themselves of voluntary return assistance. If this is not taken up, returns can take place following a final negative asylum decision reached in a fair procedure. Due consideration should be taken of humanitarian and statelessness-related aspects.

Key Recommendations:

- **Incentivize compliance with the system.** Encouraging asylum seekers to comply with the system can help reduce onward irregular movement and increase integration prospects.
- **Continue investing in integration.** Encourage EU MS to allocate at least 30 per cent of their annual EU Asylum, Migration and Integration Fund (AMIF)[16] to support integration each year, including targeted investments in employment, housing and language acquisition. Increased engagement with civil society and support for local integration actors is recommended.
- **Ensure access to assisted voluntary return and reintegration (AVRR).** Promote the development of AVRR programmes in all EU MS to support sustainable and dignified returns. In particular, persons not in need of international protection should always be offered the opportunity of AVRR and support in line with good practice.[17]

IV.   Invest in resettlement, complementary pathways and family reunification

Over 1.4 million refugees are estimated to be in need of resettlement by 2020. EU-led efforts are critical to address the shortage of resettlement opportunities, and MS can show global solidarity by expanding complementary pathways of admission. As part of the Global Compact

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[13] UNHCR, *Options Paper 1: Options for governments on reception and care arrangements for children and families*, 2019, available at: https://www.refworld.org/docid/5523e8d94.html
[14] UNHCR, *Options Paper 2: Options for governments on open reception and alternatives to detention*, 2015, available at: https://www.refworld.org/docid/5523e9024.html
[15] UNHCR, *Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity*, December 2016, available at: https://www.refworld.org/docid/58385d4e4.html
[16] See ECRE-UNHCR report, *Follow the Money II: Assessing the Use of EU Asylum, Migration and Integration Fund (AMIF) Funding at the National Level (2014-2018)*, January 2019, available at: https://www.refworld.org/docid/5c52d3e34.html
[17] UNHCR, *The 10-Point Plan in Action, 2016 Update, Chapter 9: Return Arrangements for Non-Refugees and Alternative Migration Options*, December 2016, available at: https://www.refworld.org/docid/584185c14.html

on Refugees, UNHCR, States and Partners adopted a global three-year strategy on Resettlement and Complementary Pathways[18]. Accordingly, MS shall engage to expand resettlement with more places, more actors and ensuring quality resettlement programmes. Developments to build upon include MS' commitment to resettle 30,000 individuals in 2020, the proposal for a Union Resettlement Framework Regulation, as well as community based sponsorship programmes. In addition, family reunification, which is a right under international and European law, should be facilitated for refugees and subsidiary protection beneficiaries to reduce prolonged separation, enhance integration prospects, and help mitigate irregular onward movement.

Key Recommendations:

- **Support the implementation of the three-year strategy.** Increase the number of resettlement places and countries engaged in resettlement, while promoting a whole of society approach. Involve more actors and capacitate countries, civil society and other actors and build welcoming societies.
- **Expand Complementary Pathways.** Create more opportunities for Complementary Pathways by facilitating access to community sponsorships and student scholarships.
- **Advance the Union Resettlement Framework Regulation.** Build on existing international frameworks and good practices, ensuring frameworks are protection centred and responsive to global resettlement needs.
- **Facilitate family reunification.** Reduce legal and administrative barriers to family reunification including through the adoption of good practices as outlined in UNHCR's Families Together[19] report.

V.   Addressing Statelessness

Pursuant to UNHCR's #IBelong Campaign[20] with its recent mid-point High-Level Segment (HLS) on Statelessness, and also recalling the 2015 Council Conclusions[21], the Council Presidencies can play a pivotal role in addressing statelessness.

Key Recommendations:

- **Develop a comprehensive EU strategy and an action plan** within the EU, building on the suggestions shared by UNHCR prior to the HLS and the pledges[22] at the HLS.
- **In the context of EU enlargement**, this strategy could further include increased EU support to civil registration and documentation systems in third countries.

2. Providing more development and peacebuilding support for the countries where most refugees live and originate from

In the past decade, the **global forced displacement crisis** has increased in scale and complexity. The displaced population has increased by over 50% since 2007 – from 42.7 million to 70.8 million in 2018. More than before, displaced populations are not able to access

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[18] UNHCR, *The Three-Year Strategy (2019-2021) on Resettlement and Complementary Pathways*, June 2019, available at: https://www.unhcr.org/5d15db254.pdf
[19] UNHCR, *Families Together: Family Reunification in Europe for Refugees*, December 2018, available at: https://www.unhcr.org/nl/wp-content/uploads/Familiestogether_20181203-FINAL.pdf
[20] See UNHCR's #IBelong campaign webpage: https://www.unhcr.org/ibelong/
[21] Council of the European Union, *Conclusions of the Council and the Representatives of the Governments of the Member States on Statelessness*, 4 December 2015, available at: https://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/
[22] See UNHCR's webpage: https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/

traditional durable solutions – return, resettlement or local integration – and their situation becomes increasingly protracted.

Developing regions are hosting 85 per cent of the world's refugees, with the least developed countries providing asylum for one-third of the global total. **The new paradigm on forced displacement** enshrined in the Global Compact on Refugees[23] and the EU Communication 'Lives in Dignity'[24], both operationalised in the Comprehensive Refugee Response Framework (CRRF)[25], is based on a recognition that there needs to be more complementarity between the approaches of humanitarian, development and peacebuilding actors to overcome the challenges of increased and protracted displacement, as well as to address root causes of displacement. Essentially, forging closer links between humanitarian and development action is also the key objective of the UN Secretary General's reform of the UN Development System (UNDS) launched in December 2017.

More EU development support has been provided to forcibly displaced populations and their host countries/communities in recent years. But EU development support does not yet systematically tackle displacement as a development challenge. The EU has significant influence to **couple increased development cooperation funding with political advocacy**, and hence support refugee hosting countries and communities as well as refugees to be able to enjoy more rights in countries of asylum. The EU has also an important convening power to steward peacebuilding initiatives.

The EU has two concrete opportunities to lead by example and complement its solid humanitarian support and further address forced displacement with systematic development interventions:

I. Asylum and forced displacement in the new Neighbourhood, Development and International Cooperation Instrument (NDICI)

UNHCR appreciates the planned increase for the next Multiannual Financial Framework's external budget. The possible dedicated resources to address migration within the new Neighbourhood, Development and International Cooperation Instrument (NDICI)[26] are especially welcomed, however if complemented with clear recognition of forced displacement and asylum. New financing modalities for migration should **address the impact of forced displacement on host communities and the root causes in countries of origin and transit.** Asylum and forced displacement should also be mainstreamed across thematic and geographical funding reserved for partner countries, regions, and other possible recipients. In addition, EU development resources over and above standard bilateral assistance is key to demonstrate international responsibility sharing as outlined in the Global Compact on Refugees.

Key Recommendation:

- **Ensure dedicated and additional funding for** asylum and forced displacement to hosting communities and countries through building financial instruments that recognize forced displacement as a development challenge.

[23] See UNHCR's webpage: https://www.unhcr.org/the-global-compact-on-refugees.html
[24] As called upon in the European Union: European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Lives in Dignity: from Aid-dependence to Self-reliance, Forced Displacement and Development*, COM(2016) 234 final, Brussels 26 April 2016, available at: http://ec.europa.eu/echo/files/policies/refugeesidp/Communication_Forced_Displacement_Development_2016.pdf
[25] See UNHCR's webpage: https://www.unhcr.org/comprehensive-refugee-response-framework-crrf.html
[26] European Commission, *EU Budget for the Future*, 14 June 2018, available at: https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-neighbourhood-development-cooperation_en.pdf

II. EU political leverage to promote inclusion of refugees

With more and predictable funding available for large refugee hosting countries, the EU can also use its political leverage consistently to advocate for better policies at local, national and regional level, to support host communities and ensure that refugees are included in development plans and national services, such as health, education and in the labour market. This would help to implement the 2030 Agenda[27] through which MS have committed to leave no one behind in their implementation of the Sustainable Development Goals (SDGs). The EU could consider the eligibility criteria established by the World Bank Refugee Program[28], which have been instrumental for progress towards the socio-economic inclusion and stabilization of refugee populations.

Key Recommendations:

- Coupled with well stocked financial instruments, **ensure sound eligibility criteria** to improve protection policies in large refugee hosting countries to access EU development resources reserved for forcibly displaced and their hosts.
- Encourage EU MS to **consider forced displacement dimensions** when deciding on bilateral official development assistance (ODA) allocations, with the aim to achieve inclusion of refugees into regional and national development plans.

UNHCR, January 2020

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[27] United Nations: *Transforming our World: the 2030 Agenda for Sustainable Development*, A/RES/70/1, 2015, available at: https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf, and UNHCR: *UNHCR and the 2030 Agenda - Sustainable Development Goals, 2017*, available at: https://www.refworld.org/docid/59db4b224.html
[28] See IDA – World Bank Group's webpage: http://ida.worldbank.org/replenishments/ida19-replenishment